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Federal Defender Newsletter
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CJA PANEL TRAINING

Sacramento CJA Panel training will be on Wednesday, April 17th at 5:00 p.m. in the jury lounge of the U.S. District Court, 501 I Street. United States District Court Magistrate Judge Dale A. Drozd will be presenting on "Representing Clients at Initial Appearance and Detention Hearings: A Federal Magistrate Judge's Perspective."

Fresno CJA Panel training will be on Tuesday, April 16th at 5:30 p.m. at the jury assembly room of the U.S. District Court in Fresno. Computer forensics expert Marcus Lawson of Global Compusearch will be presenting "Forensic Evidence in Criminal Cases."

CLIENT CLOTHES CLOSET

If you need clothing for a client going to trial or for a client released from the jail, or are interested in donating clothing to the client clothes closet, please contact Debra Lancaster at 498-5700. If you are interested in donating clothing or money to cover the cost of cleaning client clothing, please contact Debra.

TOPICS FOR FUTURE TRAINING SESSIONS

If you know of a good speaker for the Federal Defender's panel training program, or if you would like the office to address a particular legal topic or practice area, please e-mail your suggestions to Francine Zepeda (Fresno) at francine_zepeda@fd.org or Lexi Negin (Sacramento) at lexi_negin@fd.org.

ADDRESS, PHONE OR EMAIL UPDATES

Please help us ensure that you receive this newsletter. If your address, phone number or email address has changed, or if you are having problems with the email version of the newsletter or attachments, please call Kurt Heiser at (916) 498-5700. Also, if you are receiving a hard copy of the newsletter but would prefer to receive the newsletter via email, contact Karen Sanders at the same number.

ONLINE MATERIALS FOR CJA PANEL TRAINING

The Federal Defender's Office will be distributing panel training materials through our website - www.cae-fpd.org. If a lawyer is not on the panel, but would like the materials, he or she should contact Lexi_Negin@fd.org.

NOTABLE CASES

Supreme Court

Florida v. Jardines, No. 11-564 (3-26-13). In an opinion written by Justice Scalia, the Court affirmed the Florida Supreme Court and held that a dog sniff on the front porch of a house constitutes a search for purposes of the Fourth Amendment.

The Court began its analysis by reiterating, as it held in United States v. Jones last term, that the Fourth Amendment "establishes a simple baseline" that when the Government obtains information by physically intruding on a persons, houses, papers, or effects, it conducts a "search." Although the Katz "reasonable expectation of privacy" test adds to this baseline, "it does not subtract anything" from the Fourth Amendment's protections when the government physically intrudes upon a constitutionally protected area. The Court also noted that among protected areas, "the home is first among equals," and includes the home's curtilage, the area immediately surrounding the home, including the front porch.

The Court noted that in general, individuals are allowed to approach the front door of a home and knock, and therefore a police officer, like any private citizen, can approach a home and knock on the front door without a warrant. This doctrine has been referred to as the "knock and talk" exception to the warrant requirement. However, the scope of this "license" allowing person to approach the front door of a home to knock "is limited by the purpose" of the approacher. Because generally persons are not allowed to approach a front door to search for evidence, approaching a front door to search for evidence does not fall within this category of widely accepted behavior. Instead it is a "search" for Fourth Amendment purposes.

The Court emphasized that whether or not the defendant had a reasonable expectation of privacy in the front porch of his home is irrelevant. As stated by the Court, "[o]ne virtue of the Fourth Amendment's property-rights baseline is that it keeps easy cases easy. That the officers learned what they learned only by physically intruding on Jardines' property to gather evidence is enough to establish that a search occurred."

Finally, the fact that a police dog is not a high-tech new device for conducting searches is irrelevant; "when the government uses a physical intrusion to explore details of the home," it conducts a search.

Ninth Circuit

Knight v. Ahlin, No. 10-56211 (3-13-13)(Per curiam with Goodwin, Kleinfeld, Silverman). The petitioner, a convicted rapist, was scheduled to be released from state prison. Just before the release, the state moved for his civil commitment as a sexually violent predator. This was in 2004. The petitioner was held . . . and held . . . and held some more. Defense counsel kept continuing the trial, and the state never pushed for it. The petitioner kept asking for a trial. Eventually, the petitioner went to federal court. The state argued that the Younger doctrine barred the federal courts from interfering. No, said the Ninth Circuit, Younger does not apply because the state proceeding must be ongoing. This definitely was not ongoing. The petition is granted.

United States v. Alvirez, Jr., No. 11-10244 (3-14-13)(Rawlinson, with Nelson and Ikuta). The Ninth Circuit reverses a conviction for an aggravated assault arising out of Indian Country jurisdiction because the court abused its discretion in admitting an unauthorized Certificate of Indian Blood. The document was not self-authenticating, as tribes are not listed as a sovereign that can self-authenticate under the rule, and the witness did not recognize or have knowledge of the Certificate. The case is remanded.

Milke v. Ryan, No. 07-99001 (3-14-13)(Kozinski, with Farris and Bea). A Phoenix Police detective wrung a confession

out of petitioner for supposedly arranging for the murder of her son. She denied it and said she invoked and asked for a lawyer. The trial was a swearing match between the petitioner and the detective. Petitioner was convicted and sentenced to death, where she has been detained for the last 22 years. Unbeknownst to the defense team, the detective had a record of lying, been disciplined for it, and was the subject of court orders about his dishonesty. The State did not turn the material over, despite defense subpoenas. The Ninth Circuit found a clear violation of Brady and Giglio. The Ninth Circuit stated that the state trial judge "grossly misapprehended" the nature of the non-disclosed documents and the state decision ran counter to clearly established federal constitutional law. Accordingly, AEDPA didn't bar relief.

The Ninth Circuit not only ordered the district court to conditionally grant the writ, but made further provisions ensuring the defense team receive a full copy of the detective's personnel file and providing the Court's opinion be forwarded to federal prosecutors for investigation into whether the detective's conduct, and that of his supervisors and other state and local officials, amounts to a pattern of violating the federally protected rights of Arizona residents.

Chief Judge Kozinski wrote a concurring opinion describing the case as "disturbing" and observing that Ms. Milke has spent 22 years on death row although the only evidence of her guilt is the testimony of police officer with a long history of misconduct that includes lying under oath, accepting sexual favors in exchange for leniency, engaging in unorthodox and abusive interrogation methods, and ignoring *Miranda* invocations. As stated by Chief Judge Kozinski, "[t]he Phoenix Police Department and [the detective's] supervisors there should be ashamed of having given free rein to a lawless cop to misbehave again and again, undermining the integrity of the system of justice they were sworn to uphold. As should the Maricopa County Attorney's Office, which continued to prosecute [the detective's] cases without bothering to disclose his pattern of misconduct.